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Skewed road map to Kyoto

By Duane Parde

New England has a proud reputation of being the birthplace of American democracy. One would not expect to find state officials imposing their far-reaching changes on the entire nation by doing an end-run around Congress and the legislative process. Yet the attorneys general of Massachusetts, Connecticut and Maine are attempting to do just that.

Earlier this month, they filed suit against the Environmental Protection Agency to try to force the federal government to regulate carbon dioxide under the Clean Air Act. The AGs believe carbon dioxide contributes to global warming. But they are not petitioning their U.S. senators and congressmen to enact new regulations. Instead, they are taking the audacious step of bypassing our elected representatives and trying to force changes on the EPA directly, by suing it.

Why not go through Congress? Because too few Americans would support the measure. The claim that carbon dioxide contributes to global warming is highly controversial, and is by no means agreed upon in the scientific community. Plenty of evidence suggests global temperature changes during the last century have stemmed from natural causes, not man-made ones. The U.S. government, even after spending \$45 billion in global warming research over the last decade, still concedes the science is inconclusive.

The AGs would be using weak science as a basis to impose extraordinary burdens on American society. Their aim is to produce defacto compliance with the Kyoto Protocol on global warming. But the U.S. Energy Information Administration estimates compliance would raise electricity costs by

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86 percent, gasoline by 66 cents a gallon, and fuel oil by 76 percent. The ripple effects on the rest of the economy would be enormous. And the poor and elderly would suffer most.

Such sacrifices would hardly make a difference in any case. Climatologists predict implementation of the Kyoto Protocol would offset global warming by an unnoticeable .07 degree Celsius. And China, India and other developing countries would not be required to make any sacrifices at all, negating any action taken by developed countries. That was one reason the U.S. Senate in 1997 voted 95-0 to reject the treaty.

Given the questionable merits of trying to control global warming through carbon dioxide regulation, it is easy to see why the AGs and the interest groups that support them are in such a minority.

The ability of a special interest group to impose its agenda on the entire nation goes against everything democracy stands for. The Founding Fathers set up a system of separation of powers to preserve liberties and protect the citizenry from the will of the few. The Constitution directs the legislative branch to enact laws, the executive branch to carry them out, and the judicial branch to interpret the laws and ensure their constitutionality. It is something everyone learns in junior high school, but all too often, it is a lesson ignored.

Regulation through litigation — where unelected officials write the laws — is sadly becoming a more frequent occurrence, with frightening implications for the health of American democracy. Anytime the federal government wants to apply its coercive powers on the people, elected representatives must approve. The citizens of Arizona, Iowa or Kentucky should not be subject to the will of a handful of people in Massachusetts, Connecticut and Maine. Yet that is what this lawsuit tries to achieve.

The EPA is not authorized to regulate carbon dioxide in any case. As these AGs would have it, every time we exhale we are polluting the environment. The Clean Air Act does not list carbon dioxide as one of the six criteria pollutants to be monitored for air quality. Regulating it would open the door to regulating water vapor and oxygen as well, which are the two largest greenhouse gases in the atmosphere.

As stated in a 1988 U.S. Supreme Court case, "It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress." (Bowen vs. Georgetown University Hospital, 488 U.S. 204, 208 [1988]). And the regulations the AGs have in mind would result in extraordinary government control over the economy by imposing strict controls on all fossil-fuel-burning industrial facilities, automobile manufacturers, and other entities. A weighty matter like this should be decided by Congress.

The Founding Fathers carefully arranged it so national policy is made by elected representatives that each state sends to the

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nation's capital. The AGs, meanwhile, are supposed to focus on what happens in their state capitals. This latest move is a setback for democracy and the Constitution.

Duane Parde is executive director at the American Legislative Exchange Council, the nation's largest bipartisan membership organization of state legislators.

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